FILED NOVEMBER 19, 2012

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **CHARLOTTE SPADARO,** **Member No. 47163,** A Member of the State Bar.	)	Case Nos.: **09-O-15762-RAP** (10-O-5994; 10-O-06216; 10-O-08989; 10-O-08990; 10-O-08992; 10-O-08993; 10-O-08994; 10-O-08995; 10-O-10248; 10-O-10800; 10-O-10807; 11-O-16040) **11-O-17875-RAP (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this consolidated, original disciplinary proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charges Respondent Charlotte Spadaro (Respondent) with a total of 19 counts of misconduct – 14 counts charge Respondent with misconduct in 8 separate client matters; 3 counts charge Respondent with misconduct involving her CTA; 1 count charges Respondent with misconduct in a lawsuit in which she was the plaintiff and represented herself; and 1 count charges Respondent with making misrepresentations to the State Bar during a disciplinary investigation.[2] The court finds Respondent culpable on 16 of the 19 counts and, after considering the facts and the law, recommends, among other things, that Respondent be disbarred from the practice of law.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

[2] Initially, Respondent was charged with 20 counts of misconduct; however, at trial the court dismissed with prejudice count fifteen (case number 10-O-10807 – the Barrios Matter) based on a stipulation of the parties.

The State Bar was represented by Deputy Trial Counsel Erin McKeown Joyce. Respondent represented herself.

Significant Procedural History

The State Bar filed the notice of disciplinary charges (NDC) in case number 09-O-15762-RAP[3] on November 23, 2011. And Respondent filed a response to that NDC on December 9, 2011.

The State Bar filed the notice of disciplinary charges (NDC) in case number 11-O-17875-RAP on May 8, 2012. And Respondent filed a response to that NDC on May 29, 2012.

The court consolidated case numbers 09-O-15762-RAP and 11-O-17875-RAP for all purposes in an order dated June 7, 2012.

Trial was held on 14 days between August 6 and August 27, 2012. The court took the consolidated proceeding under submission for decision on August 27, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 26, 1970, and has been a member of the State Bar of California since that date.

Respondent was called to testify by the State Bar. Respondent invoked her right under the Fifth Amendment to the United States Constitution not to answer each question posed to her by the State Bar. (See, e.g., Evid. Code, § 940.) The court takes no inference from Respondent's invocations of her Fifth Amendment right. (See, e.g., Evid. Code, § 913.)

While she was driving her car, Respondent was hit by a drunk driver on November 22, 2009. She was thereafter admitted to Loma Linda Hospital on December 12, 2009, complaining

[3] Case number 09-O-15762-RAP included correlated case numbers 10-O-5994; 10-O-06216; 10-O-08989; 10-O-08990; 10-O-08992; 10-O-08993; 10-O-08994; 10-O-08995; 10-O-10248; 10-O-10800; and 11-O-16040. As noted above in footnote 2, case number 10-O-10807 (count fifteen) was dismissed at trial.

of, among other things, lower back pain and numbness and tingling in her feet. She was diagnosed with thoracic spine osteomyelitis T-9 and T-10 and commenced treatment. On December 23, 2009, Respondent was released from Loma Linda Hospital and then admitted to Redlands Health Care Center (Redlands Center) for continued rehabilitation. She was released from the Redlands Center on February 23, 2010.

Case Number 09-O-15762-RAP – The Maciel Matters

Facts

The Maciel Bankruptcy & Home-Loan Modification Matters

On December 8, 2008, Mario and Esperanza Maciel retained Respondent to represent them in bankruptcy and to obtain home-loan modifications with respect to their homes in California and Nevada. The Maciels paid Respondent $2,200 to prepare and file a Chapter 7 bankruptcy petition on their behalf. Respondent did not provide the Maciels with a written fee agreement. However, sometime in January 2009, Respondent provided the Maciels with a handwritten receipt for the $2,200 that they paid her to file their bankruptcy petition.

Mr. Maciel collected his documents for the petition and several times took them to Respondent at a dog-boarding kennel in San Bernardino (or Riverside). Respondent had the Maciels sign blank Chapter 7 bankruptcy forms/pleadings. The Maciels never were shown or given copies of the completed petition and its schedules before Respondent filed them on February 2, 2009. Moreover, the Maciels were unaware that, with the petition, Respondent filed a Declaration regarding Limited Scope of Appearance Pursuant to Local Bankruptcy Rule 2090-1, which limited Respondent's involvement and responsibility in the Maciels' bankruptcy case.

Respondent did not prepare the Maciels' bankruptcy petition; the petition and its schedules were prepared by paralegal Edward Mazzarino. The schedules the paralegal prepared

were inaccurate and deficient. For example, the real property the Maciels own in Nevada and California were incorrectly identified in the schedules; schedule C incorrectly indicated that the Maciels were surrendering their California residence because it was not listed as exempt; and the Maciels' Nevada property was incorrectly listed on schedule A as being two properties.

The Bankruptcy Court issued notices, which were properly served on Respondent, identifying a number of deficiencies in the Maciels' petition and schedules. Initially, Respondent failed to correct the deficiencies.

On February 5, 2009, the bankruptcy court ordered the Maciels to file an Official Form 23, which is a Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management (Form 23). The order was served on and received by Respondent, who failed to comply with the notice by filing the completed Form 23 that the Maciels gave Respondent in February 2009.

Between February 24, 2009 and March 20, 2009, three of the Maciels' creditors, CitiFinancial, Chrysler Financial, and Creditor America, filed motions for relief from the automatic stay. Respondent received notice of all three motions, but failed to notify the Maciels of the motions. In addition, Respondent failed to file any response to either the CitiFinancial or the Chrysler Financial motion. Nor did Respondent appear at the March 25, 2009 hearings on those two motions. The bankruptcy court granted both of the motions.

Respondent never told the Maciels that she was not going to file responses to the motions or that she was not going to appear at the March 25, 2009 hearing.

Because of the deficiencies in the Maciels' bankruptcy schedules, Respondent hired another paralegal named Scott Stevens, who is a disbarred attorney, to prepare amended schedules and statements. And, on March 30, 2009, Respondent filed those amended schedules and statements on behalf of the Maciels.

On April 6, 2009, the Maciels paid Respondent $600 to prepare home-loan-modification proposals/packages for their Nevada residence and their California residence. Thereafter, Mr. Maciel repeatedly called and left Respondent many messages concerning the status of the two home-loan modifications. Respondent failed to respond to almost all of the telephone messages and never gave the Maciels an explanation as to the status of those two matters. What is more, there is no evidence that Respondent ever performed any home-loan-modification services for the Maciels.

On April 10, 2009, Respondent filed an untimely opposition to the Creditor America motion for relief from automatic stay. Creditor America's claim related its lien on the Maciels' Nevada residence. In her opposition, Respondent stated that the Maciels were waiting for the arrival of a loan-modification package so that a loan modification could be negotiated. However, there is no evidence that Respondent had performed any home-loan-modification services with respect to the Maciels' Nevada residence as of April 10, 2009. In addition, Respondent failed to appear at the April 15, 2009 hearing on Creditor America's motion for relief from automatic stay. Respondent never notified the Maciels that she was not going to appear at that hearing.

On June 24, 2009, the Maciels wrote a letter to Respondent requesting a full refund of the $2,800 in fees they paid Respondent. Respondent received the letter, but did not respond to it.

On August 30, 2009, at the Maciels' insistence, Respondent finally signed a substitution-of-attorney form, substituting the Maciels in propria persona in place of Respondent. Thereafter, on September 10, 2009, the bankruptcy court dismissed the Maciels' bankruptcy case because Respondent never filed a completed Form 23 as ordered.

On September 17, 2009, the Maciels filed a motion to reopen their bankruptcy case on the grounds that Respondent recklessly failed to file the completed Form 23 that they gave her in

February 2009. That same day, the Bankruptcy Court granted the Maciels' motion to reopen and issued an order discharging their debts.

The Maciel Fee Arbitration Matter

In an attempt to recover the $2,800 in fees they paid Respondent, the Maciels initiated a fee arbitration proceeding against Respondent before the Riverside County Bar Association (RCBA). And, on February 16, 2011, RCBA properly served, on Respondent at her State Bar membership-records address, a February 10, 2011 arbitration award in favor of the Maciels and against Respondent in the amount of $2,500 plus costs (RCBA arbitration award). The United States Postal Service did not return, to RCBA, the RCBA arbitration award as undeliverable or for any other reason; accordingly, the court finds that Respondent received it. (Evid. Code, § 641 [mailbox rule].)

Respondent did not appear at the fee arbitration hearing.[4] She did, however, file a small claims court action against the Maciels. Even though Mr. Maciel did not appear at the trial in the small claims court action (he was in Mexico at the time), Mrs. Maciel did. Thereafter, the small claims court entered judgment in favor of Respondent and against the Maciels for $2,729.50 plus $50 in costs.

The State Bar contends that the RCBA arbitration award became final and binding on Respondent under section 6203, subdivision (b) because Respondent did not file his small claims court action within 30 days after the service of the RCBA arbitration award in favor of the Maciels. The record, however, does not establish when Respondent filed her small claims court action. Accordingly, the court must presume that Respondent filed her small claims court action within 30 days after service of the RCBA arbitration award so that the small claims court action

[4] If Respondent *willfully* failed to appear at the arbitration hearing, Respondent would not have been entitled to a trial after arbitration under section 6204, subdivision (a).

was authorized under section 6204 and that the small claims court's judgment in favor of Respondent superseded the RCBA arbitration award in favor of the Maciels.[5]

Conclusions

Count One -- (Rule 3-110(A) [Failure to Perform Competently])

In count one, the State Bar charges that Respondent willfully violated rule 3-110(A), which provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Specifically, the State Bar charges that Respondent violated rule 3-110(A) by filing deficient schedules and forms in the Maciels' bankruptcy case, failing to file oppositions to the first two motions for relief from automatic stay, failing to timely oppose and appear at the hearing on the third motion for relief from automatic stay, failing to correct the deficiencies in the forms and schedules she filed in the Maciels' bankruptcy case, and failing to provide any legal services of value whatsoever on the Maciels' home-loan modifications. The record clearly establishes each of the charged violations of rule 3-110(A). Respondent recklessly and repeatedly failed to perform competently in the Maciel bankruptcy & home-loan modification matters.

Count Two - (§ 6068, subd. (m) [Failure to Communicate])

In count two, the State Bar charges that Respondent willfully violated section 6068, subdivision (m), which provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep his or her clients reasonably informed of significant developments in matters in which the attorney has agreed to provide legal services. The record clearly establishes that, as charged, Respondent willfully violated section 6068, subdivision (m)

[5] It is well-settled that, in State Bar Court disciplinary proceedings, all reasonable doubts must be resolved in favor of the Respondent attorney. (*In the Matter of Frazier* (Review Dept.1991) 1 Cal. State Bar Ct. Rptr. 676, 694, citing *Kapelus v. State Bar* (1987) 44 Cal.3d 179, 183.) If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.)

by failing to promptly respond to the multiple messages from Mr. Maciel inquiring as to the status of the home-loan modifications.

Count Three - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

In count three, the State Bar charges that Respondent willfully violated rule 3-700(D)(2), which requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. The record fails to establish the charged violation, by clear and convincing evidence, in light of the small claims court judgment Respondent obtained against the Maciels. Accordingly, count three is DISMISSED with prejudice.

Case Number 10-O-05994 – The Carrillo Matter

Facts

In about September 2009, Hugo Carrillo met with a representative of Respondent's law office named "Bobby." Carrillo wanted an attorney to file a home-loan modification with his lender and was referred to Bobby by a friend. Carrillo paid Bobby between $900 to $1,000 for Respondent to prepare and file a home-loan modification with his lender, Indymac Mortgage Services (Indymac). Carrillo never signed a retainer agreement with Respondent's law office.

During the course of the representation, Bobby mentioned the possibility of filing a civil complaint against Indymac because it might have foreclosed on his residence in an improper way. Following Bobby's advice, Carrillo authorized a lawsuit to be filed against Indymac.

Carrillo never spoke to Respondent about his loan modification or his lawsuit against Indymac. However, Carrillo did see Respondent in her office on one or two occasions.

Carrillo recalls receiving a letter from Indymac denying his home loan modification.

On November 17, 2009, Respondent filed a complaint against Indymac for Carrillo in the San Bernardino Superior Court. The superior court set the case for a hearing on February 19, 2012, to receive a report on service completion. Even though Respondent received notice of that

hearing, she neither appeared at the hearing nor arranged to have another attorney appear in her place. In addition, Respondent failed to notify Carrillo of the February 19, 2010 hearing. Even though Carrillo may have been residing at another address at that time, Respondent had Carrillo's cell phone number for contact information.

At the February 19, 2010, hearing, the superior court (1) issued an order to show cause (OSC) regarding why Carrillo should not be sanctioned $150 for improperly serving the complaint on defendant Indymac and (2) set that OSC for a hearing on April 22, 2010. Respondent received notice of the OSC and the April 22, 2010 hearing, but never informed Carrillo of the OSC, the hearing, or that she improperly served the complaint on Indymac.

Sometime after February 2009, Carrillo spoke to someone in Respondent's office who informed him that Respondent was ill and might substitute out of Carrillo's lawsuit. However, Respondent never withdrew from or substituted out of the case. Shortly thereafter, Carrillo went to Respondent's office, but found that it was empty. Carrillo never received a change-of-address notice from Respondent.

On April 22, 2010, the superior court held the hearing on the OSC regarding sanctions. Neither Respondent nor any other attorney appeared for Carrillo. Thus, the superior court continued the OSC hearing to May 21, 2010, and gave Respondent notice of the continued hearing. However, neither Respondent nor any other attorney appeared for Carrillo at the May 21, 2010, hearing.

At that May 21, 2010 hearing, the superior court dismissed Carrillo's lawsuit without prejudice for failure to prosecute and gave Respondent notice of the dismissal order. Respondent, however, failed to notify Carrillo that his lawsuit had been dismissed. By that point in time, Carrillo had lost interest in the lawsuit since he had already lost his home and was depressed over the whole matter.

Conclusion

Count Four - (Rule 3-110(A) [Failure to Perform Competently])

In count four, the State Bar charges that Respondent, in willful violation of rule 3-110(A), intentionally, recklessly, or repeatedly failed to perform legal services with competence when she failed to file any opposition to the OSC regarding sanctions and failed to appear at the two hearings on the OSC. The record clearly establishes the charged violation of rule 3-110(A).

Case Number 10-O-05994 – Dog-Boarding-Kennel Matter

Facts

Respondent met Angelo Rivers in 2006 when Respondent boarded some of her dogs at Rivers's dog-boarding Kennel in San Bernardino (or Riverside), California.

In about August 2008, Rivers had a dispute with the County of San Bernardino over a waterline that was interfering with his boarding-kennel operations. And, in about March 2009, a local newspaper ran a story about the dispute. At that time, Rivers had a tenant on the property who was leasing the property and operating the boarding kennel. Because of Rivers's waterline dispute with the county, that tenant could not financially continue to lease the property and operate the kennel.

Shortly after the newspaper printed its story, Respondent appeared at Rivers's kennel and told Rivers that she could help him. Respondent offered to prepare a loan modification proposal to present to Telesis Community Credit Union (Telesis), which was the mortgage holder on the kennel property. In addition, Respondent offered to take over the tenant's kennel under the same lease terms as the previous tenant. Rivers accepted both of Respondent's offers.

A lease agreement was signed by Respondent and Rivers, and Respondent prepared a loan modification package for Telesis. Under terms of the lease agreement, Respondent was to

run the kennel business, collect and keep the boarding fees, and pay Rivers's monthly mortgage on the kennel property directly to Telesis.

At least according to Rivers, Rivers was forced to continue operating the kennel and collecting the boarding fees because Respondent did not come to the kennel every day. Moreover, Respondent made only one monthly mortgage payment to Telesis and then made no additional payments. In addition, San Bernardino County filed one or more superior court lawsuits against Respondent seeking to force Respondent to comply with the Health and Safety Code provisions regulating the operation of dog-boarding kennels.

On August 26, 2009, Respondent filed, in San Bernardino Superior Court, a lawsuit against Rivers and others over the operation of the kennel (kennel lawsuit). The following day, Respondent filed an ex-parte application for a temporary restraining order (TRO). Respondent appeared at the hearing on that application, and the superior court granted the TRO without opposition. The superior court also set, for a hearing, a request that Respondent filed for a preliminary injunction.

San Bernardino County sought to intervene in the kennel lawsuit and to consolidate therewith the county's enforcement and nuisance-abatement lawsuit (or lawsuits) against Respondent. At an October 19, 2009 hearing on Respondent's request for a preliminary injunction, the superior court granted the county's motion to intervene and to consolidate the county's enforcement and abatement lawsuit with Respondent's kennel lawsuit. The superior court also denied Respondent's request for a preliminary injunction.

On October 23, 2009, the county sought a preliminary injunction against Respondent seeking to stop Respondent from operating the kennel, which was unlicensed. In November 2009, the superior court issued a preliminary injunction enjoining Respondent from operating the kennel (or animal rescue facility) without a license. And, in December 2009, the superior court

ordered Respondent to remove the dogs from her kennel at the rate of 40 days per month (dog removal order). Respondent received notice of the dog removal order.

In March 2010, the superior court found that Respondent had substantially violated the dog removal order and ordered that Respondent abate the public nuisance (i.e., her unlicensed boarding kennel/animal rescue facility) effective March 29, 2010 (abatement order). Respondent received notice of the abatement order. On March 24, 2010, Respondent filed an ex-parte application to modify the abatement order.

Respondent's Personal Bankruptcy Matter

On January 15, 2010, Respondent filed a Chapter 7 bankruptcy petition on her own behalf in the United States Bankruptcy Court for the Central District of California. Respondent personally prepared her own bankruptcy petition and its accompanying schedules/forms.

In March 2010, Telesis filed a motion for relief from the automatic stay in Respondent's bankruptcy proceeding. Respondent personally appeared at the April 1, 2010 hearing on Telesis's motion, at which the bankruptcy court granted Telesis's motion and ordered that, effective April 27, 2010, the automatic stay was annulled retroactively to January 15, 2010, and that any actions taken after January 15, 2010, by Telesis to enforce its remedies to obtain possession of the kennel property would not constitute a violation of the Stay.

April 2, 2010, Hearing in Respondent's Kennel Lawsuit

On April 2, 2010, Respondent appeared at a superior court hearing in the kennel lawsuit. At that hearing, Respondent told the superior court that the bankruptcy court gave her one month to remain on the kennel property and then President Obama gives us three months under federal law for a total of four months. Respondent's statement was clearly inaccurate because, at the April 1, 2010 hearing on Telesis's motion for relief from the stay, the bankruptcy court told Respondent that it was going to lift the stay effective April 27, 2010, so as to give Respondent

"some time" (i.e., 26 days April 1, 2010, through April 27, 2010). In addition, at the April 2, 2010 superior court hearing, Respondent falsely told the superior court that she listed her dogs as personal assets in her bankruptcy proceeding.

Conclusion

Count Five - (§ 6068, subd. (d) [Employ Means Consistent with Truth])

In count five, the State Bar charges that Respondent willfully violated section 6068, subdivision (d), which provides that an attorney has a duty to employ those means only as are consistent with truth and must never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. The record clearly establishes, as charged, that Respondent willfully violated section 6068, subdivision (d) by deliberately misrepresenting to the superior court that she listed her dogs as assets in her bankruptcy proceeding.

The record does not, however, clearly establish the charge that Respondent violated section 6068, subdivision (d) when she told the superior court "that she had been granted an additional ninety (90) days protection by the Bankruptcy Court to remain on the [kennel] premises." Even though Respondent's statement was clearly inaccurate, there is no clear and convincing evidence that Respondent knew, or in the absence of gross negligence should have known, that her statement was false at the time she made it.

Case Number 10-O-06216 – The Suppe Matter

Facts

On April 13, 2009, Charles and Patricia Suppe met with an individual named Robert, who worked for Respondent. The Suppes were searching for an attorney to prepare and send a home-loan-modification request to their mortgage lender. Robert showed them some documents from the Spadaro law firm and explained the process to them. Robert did not guarantee an outcome for their loan-modification request, but he did assure the Suppes that, if the

modification request was not successful, they would get their money back from Respondent. The Suppes paid a fixed fee of $2,500 for Respondent's home loan modification services.

The Suppes met with Robert for a second time on April 27, 2009, and signed an attorney-client fee agreement with the Spadaro Law Group for a fixed fee of $2,500 for the loan modification.

Over the course of the next several months, the Suppes supplied the Spadaro Law Group with documents to prepare their home-loan-modification request. The Suppes never met Respondent; they dealt exclusively with Robert.

By June 2009, the Suppes became concerned about the progress being made in their home-loan-modification matter. In late June 2009, Mrs. Suppe sent Robert an email at the Spadaro firm asking for a status update. Robert told Mrs. Suppe not to worry.

Then, in July 2009, Mrs. Suppe called the Spadaro firm a number of times, and each time, Robert told her not to worry; they were waiting. Mrs. Suppe contacted her lender directly and asked about the status of her home-loan modification. Mrs. Suppe was informed that the bank had no record of a home loan modification being filed on her behalf. Mrs. Suppe called Robert, who told her that that is what the banks say and not to worry.

Also, in July 2009, Mrs. Suppe sent an email to Robert at the Spadaro Law Group, requesting an update and expressing her feeling of panic since she could not afford that month's mortgage payment. Finally, at the end of July 2009, Mrs. Suppe spoke with Robert and informed him that she and her husband owed the Internal Revenue Service (IRS) $10,000 and that she and her husband were almost out of money. Robert advised Mrs. Suppe not to pay her monthly mortgage payment, but to pay the IRS.

After that conversation, Mrs. Suppe had no contact with Robert or the Spadaro Law Group until October 2009 when Mrs. Suppe became very nervous about her loan modification

and demanded a meeting with Robert. Robert told Mrs. Suppe that they needed to re-write her hardship letter.

In November 2009, Robert told Mrs. Suppe the modification process takes a long time and assured her that he had sent her loan-modification request to her lender. Even though Mrs. Suppe had never received a copy of the home-loan-modification package the Spadaro Law Group allegedly prepared and sent to Mrs. Suppe's lender, Mrs. Suppe emailed additional documents related to her modification request to Robert on November 3, 2009. Then, on November 17, 2009, the Suppes signed a hardship statement to be included in their home-loan-modification package.

In December 2009, Mrs. Suppe spoke with Robert concerning a letter on foreclosure that she received from her lender in November 2009. Robert again told her not to worry. Mrs. Suppe never spoke to Robert again after this conversation. Instead, Mrs. Suppe called her lender and was again informed that no home-loan-modification request had been submitted on her behalf. On the advice of her lender, Mrs. Suppe contacted a free service that helped her submit a home-loan-modification request to her lender. Her lender approved a trial home-loan modification. Thereafter, the Suppes successfully obtained a permanent home-loan modification from their lender without any assistance from the Spadaro Law Group or Respondent.

Mrs. Suppe attempted unsuccessfully to contact Robert in January and February 2010 in an attempt to get her fee returned from the Spadaro Law Group. And, on March 17, 2010, the Suppes sent a letter to the Spadaro Law Group terminating Respondent's services and requesting the return of the $2,500 fee, which Robert had guaranteed. Shortly thereafter, a person who identified herself as a secretary for Respondent contacted Mrs. Suppe, informing her that Respondent had been in a car accident and that Respondent would contact the Suppes when she was better. The secretary could not guarantee a refund.

Respondent did not return the fee to the Suppes. Thus, the Suppes filed for fee arbitration with Respondent. Respondent, however, had the arbitration hearing rescheduled twice. As of the trial in the present State Bar Court proceeding, the arbitration hearing had still not been held.

Neither the Spadaro Law Group nor Respondent performed any legal services of value for the Suppes.

Conclusions

Count Six - (Rule 3-110(A) [Failure to Perform Competently])

The record clearly establishes that, as charged in count six, Respondent recklessly and repeatedly fail to perform legal services with competence in willful violation of rule 3-110(A) by failing to complete the Suppes' home-loan-modification request and by failing to otherwise perform any legal services of value for the Suppes.

Case Number 10-O-08989 – The Melendez Action

Facts

On January 7, 2010, Cynthia Melendez ("Melendez") retained Respondent to represent her in two civil matters. In the first matter, Respondent was to file a lawsuit against the owner of the mobile home park where Melendez previously resided for an illegal eviction and harassment (Melendez action). In the second matter, Respondent was to file a class action lawsuit against the owner of the mobile home park (class action).

Respondent did not prepare a retainer agreement in the Melendez matter. Thus, Melendez prepared one using examples that she found on the Internet. Both Melendez and Respondent signed the agreement, which did not even include the amount of Respondent's fee.

Melendez met with Respondent while Respondent was recuperating from the auto accident at the Redlands Center. Respondent told Melendez that she would file a lawsuit seeking

to recover Melendez's mobile home or the cash value of the mobile home. Melendez paid $6,291.08 in advanced fees to Respondent for both the Melendez action and the class action.

On March 1, 2010, the complaint in the Melendez action was filed against the owner of the mobile home park in the Los Angeles County Superior Court. At the same time, a filing-fee-waiver request was filed and granted. Respondent, however, did not prepare or file the complaint; Melendez did. Melendez prepared the complaint based on a draft complaint that Respondent gave her. Respondent also gave Melendez a list of items to attach to the complaint as an exhibit.

Respondent gave Melendez little information on how to file the civil complaint and gave Melendez incorrect information on where to file the complaint. As an example, Melendez had to prepare a civil cover sheet for the complaint using the Internet. And, when Melendez called Respondent and asked how to prepare to the civil cover sheet, Respondent told Melendez that she was too busy to answer. Eventually, Melendez was able to file the civil complaint with the help of court staff.

Sometime after the complaint was filed, Respondent contacted Melendez and informed her that she had received correspondence from the defendant mobile home park owner demanding that Melendez dismiss her lawsuit or that a SLAPP suit would be filed. Melendez told Respondent she did not want to dismiss the lawsuit. This was the only information concerning the Melendez action that Melendez received from Respondent.

On June 14, 2010, the defendant filed a demurrer and motion to strike, which were properly served on Respondent. Despite being served with the demurrer and motion to strike, Respondent failed to inform Melendez of them. Moreover, Respondent failed to file any opposition to the motions.

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On July 20, 2010, after the expiration of the time for Respondent to file oppositions, the defendant filed two notices of non-opposition and a motion for sanctions. Even though Respondent received those pleadings, she failed to file any opposition to the motion for sanctions. Respondent's argument that she was deceived by defense counsel about the dates for filing responses is without merit.

On July 28, 2010, Respondent attended the hearing on the demurrer. At the hearing, the superior court sustained the demurrer to the complaint in the Melendez action without leave to amend. That same day, Respondent filed a request for continuance, which the superior court denied. Respondent received notice of the court's ruling on the demurrer.

Respondent did not notify Melendez of the superior court's ruling of July 28, 2010. Melendez learned of the July 28, 2010 hearing by researching the superior court's web-site. Melendez called Respondent, who acted as if she was not aware of the hearing. After the hearing, Melendez confronted Respondent about what had just occurred in court. Respondent told Melendez that she could fix it and that there was a law where Melendez could blame Respondent for what had happened. Melendez told Respondent to fix it.

On August 3, 2010, Melendez terminated Respondent's employment in the Melendez action. On August 4, 2010, Melendez sent Respondent a letter confirming that she terminated Respondent's employment because Respondent failed to file the necessary paperwork and to perform the services promised. Melendez did not terminate Respondent's employment in the class action.

After Respondent's employment in the Melendez action was terminated, Respondent took no steps to withdraw as attorney of record in that action. On August 19, 2010, the superior court dismissed the Melendez action for failure to prosecute.

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Conclusions

Count Seven - (Rule 3-110(A) [Failure to Perform Competently])

The record clearly establishes that, as charged in count seven, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to properly prosecute the Melendez action before Respondent's employment was terminated, including failing to file oppositions to the demurrer and to the motion to strike.

Count Eight - (§ 6068, subd. (m) [Failure to Communicate])

In count eight, the State Bar charges that Respondent willfully violated section 6068, subdivision (m) by failing to respond to the multiple messages from Melendez concerning the Melendez action. The record, however, fails to establish the charged violation by clear and convincing evidence. Accordingly, count eight is DISMISSED with prejudice.

Count Nine - (§ 6068, subd. (m) [Failure to Communicate])

The record clearly establishes that, as charged in count eight, Respondent willfully violated section 6068, subdivision (m) by failing to notify Melendez that the defendant had filed the demurrer and the motion to strike and by failing to notify Melendez of Respondent's intention not to file any oppositions to those two motions.

Case Numbers 10-O-08989; 10-O-08992; 10-O-08993; 10-O-08994; 10-O-08995; 10-O-10248; and 10-O-10800 -- The Class Action

Facts

Melendez also retained Respondent to represent her and other residents of the mobile-home park in the class action against the owner of the mobile-home park. On February 7, 2010, while Respondent was still admitted to the Redlands Center, Respondent met with Melendez and other residents of the mobile-home park. At that meeting, the following mobile-home-park residents retained Respondent to represent them in the class action:

Francisco and Marian Vizcaino, who paid Respondent $1,472 in fees;
Gilberto Ramirez, who paid Respondent $1,472 in fees;
Laura Escobar, who paid Respondent $1,172 in fees;
Francisco and Celiazar Mata, who paid Respondent $1,472 in fees;
Felipe and Raquel Perez, who paid Respondent $1,172 in fees;
Antonio Alaniz, who paid Respondent $1,502 in fees; and
Elvia Armendariz, who paid Respondent $1,472 in fees.

Melendez and the 10 above-listed clients constituted Respondent's clients in the class action.

The class-action clients met with Respondent on a number of occasions – usually at Melendez's home. One meeting took place at a residence in Riverside, which was described by the clients as being in an abandoned house that had a terrible odor, was filled with cats, and had barking dogs outside.

Respondent told the class-action clients that it would cost between $20,000 to $25,000 to pay for her services in the class action and that as a group they could win up to $1 million from the defendant. Respondent also discussed hiring private security guards for the mobile-home park because of unsafe conditions and threats by park management. No private security guards were ever hired.

Melendez prepared receipts for each client at the meetings and helped collect declarations from each of class-action clients. Melendez was described by another class-action client as being the liaison between Respondent and the class-action clients. Melendez admits to being the liaison between Respondent and the Spanish-speaking, class-action clients.

The complaint in the class action was filed in the Los Angeles Superior Court on April 23, 2010, by Melendez, who also prepared the complaint based on a draft that Respondent gave her. Respondent instructed Melendez to list each of the class-action clients as plaintiffs in the caption of the complaint. Melendez did not know that the complaint she prepared and filed was not a true class-action complaint. Respondent never told Melendez or any of the other class-

action clients that the complaint Melendez filed on April 23, 2010, was not a true class-action complaint.

On June 14, 2010, the defendant in the class action filed a demurrer and motion to strike the complaint, which were properly served on Respondent. Even though Respondent received both motions, Respondent failed to file an opposition to either motion.

Additionally, Respondent failed to notify any of the class action clients of her intention not to file oppositions to the demurrer or motion to strike or her intention not to appear at the scheduled August 4, 2010 hearing in the class action matter.

On July 28, 2010, after the expiration of time in which Respondent could timely file oppositions to the motions, the defendant filed a notice of non-opposition to each motion. Even though Respondent received proper notice of the two notices of non-opposition, Respondent failed to take any steps to file a belated opposition to either the demurrer or the motion to strike.

After Melendez terminated Respondent's employment on the Melendez action on August 3, 2010, Respondent failed to perform any work on the class action even though her employment in the class action had not been terminated. Respondent failed to appear at the August 4, 2010 hearing on the demurrer, at which the superior court granted the demurrer without leave to amend. Respondent received proper notice of that superior court ruling/order.

On September 7, 2010, the superior court dismissed the class action for failure to prosecute. Respondent failed to notify the class-action clients of superior court's August 4, 2010 and September 7, 2010 rulings.

On September 20, 2010, some of the class-action clients went to the superior court for what they believed was a scheduled case-management conference in the class action. Upon arrival, they were informed that the class action had been dismissed and was not on calendar.

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Respondent collected over $16,000 in advanced fees from Melendez and the 10 other class-action clients and has not returned any portion of those fees to the clients.

On May 19, 2011, Melendez sent a letter to Respondent requesting that she return all unearned fees paid in advance to Respondent. Respondent has not returned any unearned fees to Melendez.

Conclusions

Count Ten -- (Rule 3-110(A) [Failure to Perform Competently])

The record clearly establishes, as charged in count ten, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) "By failing to properly prosecute the class action after filing the complaint, including failing to file an opposition to the demurrer and motion to strike, and failing to appear at the hearing on the demurrer and motion to strike."

Count Eleven -- (§ 6068, subd. (m) [Failure to Communicate])

The record does not establish, by clear and convincing evidence, that Respondent failed to respond to reasonable status inquiries from a class-action client in willful violation of section 6068, subdivision (m) as charged in count eleven. Accordingly, count eleven is DISMISSED with prejudice.

Count Twelve -- (§ 6068, subd. (m) [Failure to Communicate])

The record clearly establishes, as charged in count twelve, that Respondent failed to keep the class-action clients reasonably informed of significant developments in the class action in willful violation of section 6068, subdivision (m) by failing to notify the class-action clients of the demurrer and the motion to strike, of her intentions not to file any oppositions, or of her intention not to appear at the hearing

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Case Number 10-O-08992 – The Ramirez Matter

Facts

In June 2010, Respondent asked Gilberto Ramirez, who was one of the class-action clients at the time, to help her obtain an automobile in her own name or with Ramirez as cosigner. Respondent called Ramirez on June 12, 13, and 14, 2010, asking about a car. At the time, Ramirez's 1991 Cutlass Sierra was in the mechanic's shop for repairs. Feeling pressured by Respondent, Ramirez agreed to loan Respondent his Sierra.

On June 15, 2010, Ramirez met Respondent and her son, Jonathan Spadaro (Jonathan) when they arrived to pick up the Sierra from Ramirez. Ramirez had never met Jonathan prior to this meeting. Respondent told Ramirez that she did not have a current motor vehicle operator's license, but that her son, Jonathan, did and that he would be driving the car. Ramirez told Respondent that she could use the Sierra only for travel related to the class action and that she had to be in the car whenever Jonathan drove it. And Respondent assured Ramirez that she would be in the car with Jonathan whenever he drove the Sierra and that she would be 100 percent responsible for the Sierra.

Before Respondent and Jonathan left with Ramirez's Sierra, Respondent gave Ramirez a handwritten note, which read:

> Today June 15, 2010
>
> I take responsibility for the vehicle (2WGS055) owned by Gilbert Ramirez, who loaned it to me for 10 days, from June 15, 2010, to June 25, 2010. Miles 10015
>
> June 15, 2010 /s/
> Jonathan Spadaro
> V6126148 (Ca DMV)
>
> I also take responsibility for the car.
>
> June 15, 2010 /s/
> Charlotte Spadaro
> H0206826 (Ca DMV)

It is clear that the handwritten note does not accurately set forth the terms of the transactions because it incorrectly states that Ramirez loaned his Sierra to Jonathan. The record clearly establishes that Ramirez loaned his Sierra to Respondent (not Jonathan) and that Respondent (not Jonathan) borrowed Ramirez's Sierra. Respondent and Jonathan cannot, and did not, unilaterally alter the terms of the transaction merely by giving Ramirez the handwritten note, which was signed by Jonathan and Respondent above their handwritten names (as noted above), but not by Ramirez.

Respondent never offered to pay or paid Ramirez for her use of his Sierra. Nor did Respondent give Ramirez any security when she borrowed his car. Respondent never informed Ramirez, either in writing or orally, that he had a right to seek the advice of another attorney before agreeing to loan or loaning his Sierra to Respondent.

Respondent failed to return the Sierra to Ramirez by June 25, 2010. On June 27, 2010, Respondent left a message for Ramirez on his cell phone notifying him that his Sierra "broke down" on the 405 Freeway and that he needed to pick up the car, but admitting that she did not know exactly where Jonathan had left the car.

The next day, Ramirez spoke with Respondent, and she told him that his Sierra was parked at a gas station near the 405 Freeway and Western Avenue, in Los Angeles. Ramirez thereafter located the Sierra in a gas station parking lot. The Sierra had been vandalized; the battery and the hoses were gone and the engine was damaged. When Ramirez called Respondent, she blamed everyone else, including homeless people, for the missing parts and damage.

What is more, inside the Sierra, Ramirez found two parking tickets that were issued during the time Respondent had possession of and was responsible for the car. One ticket was

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issued in Beverly Hills and the other in Los Angeles. Ramirez was forced to pay for the two parking tickets.

Ramirez told Respondent to report the damage to the police, but she refused to do so because she did not want Jonathan involved. Ramirez called Melendez, who came to the scene with a video camera. Ramirez called the police, reported the damage, and had the Sierra towed back to Riverside.

Ramirez wanted Respondent to pay for the damage to the Sierra, but Respondent told Ramirez to report the damage to his insurance company. Ramirez told Respondent he could not do that. Respondent then told Ramirez to call Jonathan. Eventually, Jonathan paid Ramirez $300, which would have covered only a small portion of the costs to repair the Sierra. Respondent never gave Ramirez any money for damage done to the Sierra. Because Ramirez did not have the money to pay for the repairs, Ramirez donated the Sierra to a charitable organization.

Conclusion

Count Thirteen -- (Rule 3-300 [Avoiding Interests Adverse to a Client])

In count thirteen, the State Bar charges that Respondent willfully violated rule 3-300 when she borrowed Ramirez's Sierra. Because Respondent personally benefited from the transaction, Respondent had the burden to show that the transaction was fair and reasonable to Ramirez. (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 314; *Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 372-373.) What constitutes the requisite fairness and reasonableness under rule 3-300 depends on the facts, such as (1) whether the attorney acted in good faith; (2) whether the consideration, if any, was adequate; (3) whether the client had the benefit of independent legal advice; (4) whether the attorney fully disclosed the terms of the transactions in writing; and (5) whether the attorney gave the client the same advice against himself or herself that the attorney

would have given against a third party (*Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1368-1370).

The court finds not only that Respondent failed to carry her burden of proving that the transaction was fair and reasonable to Ramirez, but the court also finds that the record affirmatively establishes that the transaction was unfair and unreasonable to Ramirez in willful violation of rule 3-300(A). In addition, the court finds that the record clearly establishes that, in willful violation of rule 3-300, Respondent (1) failed to fully disclose and transmit to Ramirez, in writing, the terms of the transactions (rule 3-300(A)); (2) failed to affirmatively advise Ramirez, in writing, to seek the advice of independent counsel of his choice and failed to give him a reasonable opportunity to seek that advice (rule 3-300(B); *Rose v. State Bar* (1989) 49 Cal.3d 646, 663; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 164, 165); and (3) failed to obtain Ramirez's written consent to the transactions (rule 3-300(C)).

Case Number 10-O-08990 – The Galindo Matters

Facts

On December 7, 2009, Carmen Galindo hired Respondent to file a lawsuit against his lender, Indymac Mortgage, to stop foreclosure proceedings then pending against Galindo's property. Later, Galindo hired Respondent to defend him in an unlawful detainer action.

Galindo never met with Respondent but dealt with Respondent's office staff, primarily Antonio Barrios and Yasmin Ambriz. When Galindo first met with Barrios, Galindo was not informed that Respondent had been in automobile accident in November 2009. Galindo was later informed that Respondent was ill.

Pursuant to the attorney-client agreement between Respondent and Galindo, Galindo paid Respondent $2,500 in advanced attorney's fees for the lawsuit against Indymac Mortgage.

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On December 8, 2009, Respondent filed a lawsuit against Indymac for Galindo in the San Bernardino County Superior Court (Indymac action). Galindo does not recall ever seeing the complaint, and neither Barrios nor Respondent ever sent Galindo a copy of the complaint.

Respondent received notice of that a hearing on an OSC regarding service completion was set for March 12, 2010, in the Indymac action. The OSC hearing was scheduled because Respondent failed to file the proof of service of the summons and complaint as required by court rules.

Respondent failed to appear, or to have another attorney appear, on behalf of Galindo at the March 12, 2010 OSC hearing. At the March 12, 2010, hearing, the superior court set the matter for a case management conference on June 11, 2010. Respondent received notice of the June 11, 2010 case management conference. Even after the March 12, 2010 OSC hearing, Respondent still failed to file the required proof of service of the summons and complaint.

Moreover, Respondent failed to appear, or to have another attorney appear, on behalf of Galindo at the June 11, 2010 case management conference. Thus, the superior court set an OSC regarding dismissal for a hearing on July 12, 2010. Respondent received notice of the July 12, 2010 OSC hearing. Respondent did not file a response to the OSC regarding dismissal.

Respondent failed to appear, or to have another attorney appear, on behalf of Galindo at the July 12, 2010 OSC hearing. And the superior court dismissed the Indymac action without prejudice for failure to prosecute. Respondent received notice of the July 12, 2010 dismissal order, but failed to take any steps to reinstate the Indymac action.

Galindo was not made aware of any of the superior court dates by Respondent or her staff. Galindo was not aware that the Indymac action had been dismissed until he went to the courthouse and discovered that the case had been dismissed.

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Shortly after Galindo hired Respondent for the Indymac action, Galindo employed Respondent to represent him in an unlawful detainer action brought by Federal Home Loan Mortgage Corporation (Federal) in the San Bernardino County Superior Court (unlawful detainer action). Galindo paid Respondent an additional fee of $750 for the unlawful detainer action.

On December 17, 2009, Respondent filed an answer on behalf of Galindo in the unlawful detainer action. After Respondent filed that answer, neither Respondent nor her staff performed any legal services of value on behalf of Galindo.

On April 15, 2010, Federal filed a motion for summary judgment in the unlawful detainer action. Respondent received notice of the summary judgment motion and hearing date, but failed to file an opposition to the motion. Galindo was never informed by Respondent of Federal's motion for summary judgment.

Respondent failed to appear, or to have another attorney appear, on behalf of Galindo at the summary-judgment hearing on April 28, 2010. At the hearing, the court granted Federal's motion for summary judgment and entered judgment against Galindo. Galindo was never informed by Respondent that Federal's motion was granted or that a judgment had been entered against him.

Conclusion

Count Fourteen -- (Rule 3-110(A) [Failure to Perform Competently])

The record clearly establishes, as charged in count fourteen, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) "By failing to properly prosecute the Indymac action after filing the complaint, and failing to properly defend the unlawful detainer action, after filing the answer."

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Case Number 11-O-16040 – The Garcia Matter

Facts

In November 2009, Jay Garcia employed Respondent to represent him in a possible wrongful termination action against his employer, Verizon Wireless and Flextronics. Over the course of the representation, Garcia paid Respondent a total of $1,200 in attorney's fees.

Respondent did not prepare an attorney client retainer agreement in the Garcia wrongful termination matter.

On January 25, 2010, Garcia was terminated from employment by his employer. On that same date, Garcia sent two emails to Respondent. The first informed Respondent of Garcia's termination. And the second supplied Respondent with information about employment with Verizon/Flextronics.

On January 26, 2010, Garcia sent two additional emails to Respondent concerning his employment with Verizon/Flextronics. On March 5, 2010, Garcia sent another email to Respondent concerning his employment with Verizon/Flextronics.

From November 2009 to March 2010, Garcia telephoned Respondent almost on a weekly basis, for status updates on his matter. Respondent would tell Garcia that she was almost done.

In February 2010, Garcia paid Respondent the last $500 he owed on the $1,200 fee. Garcia also provided Respondent with file material in his termination matter.

In early 2010, Respondent agreed to represent Garcia for free in a matter concerning ownership and use of a mobile home by Garcia. Garcia was facing possible eviction from the mobile home.

On April 3, 2010, Garcia emailed Respondent concerning issues involving the mobile home matter. At the time Garcia sent the email, he still did not know whether Respondent had done any work on his behalf on his wrongful termination action. Garcia continued to telephone

Respondent concerning his wrongful termination matter. When he was able to speak with Respondent, she continued to tell Garcia that she was almost done.

On July 8, 2010, Garcia emailed Respondent a message to call him "A.S.A.P." Garcia had previously been served with an eviction notice from the mobile home and needed to speak with Respondent. Respondent failed to return Garcia's message.

Shortly after July 8, 2010, Garcia contacted an attorney friend regarding his wrongful termination matter. His friend referred Garcia to Attorney John Gulaino. Garcia retained Attorney Gulaino to represent him in his wrongful termination matter.

Attorney Gulaino requested all documents Garcia possessed regarding his wrongful termination matter from Respondent. Garcia had no documents, having previously given all his documents to Respondent. Attorney Gulaino sent a letter to Respondent and spoke with her on the telephone. Respondent told Attorney Gulaino that she had not received any documents from Garcia and that, if she had, she would have returned them to Garcia.

During the phone conversation, Respondent did not inform Attorney Gulaino of any work she performed in Garcia's wrongful termination matter.

Attorney Gulaino was able to obtain employment records for Garcia from Garcia's former employer. However, Garcia gave Respondent his time records and did not get them back. Attorney Gulaino needed the time records for a possible time-wage claim on behalf of Garcia.

On September 24, 2011, Garcia sent a letter to Respondent requesting an accounting of services in his wrongful termination matter, which was not to include any time spent on his eviction matter since their verbal agreement was that she would handle that matter for free. The letter also requested Respondent to return his file and fees paid but not earned by Respondent.

On October 10, 2011, Respondent sent a letter in response to Garcia, enclosing a letter she had sent to the State Bar regarding his matter. The record fails to establish that Respondent

ever contacted Verizon Wireless or Flextronics on behalf of Garcia; that Respondent ever prepared or filed a civil complaint against Verizon Wireless or Flextronics on behalf of Garcia; or that Respondent provided any legal services of value to Garcia in his wrongful termination matter or in his eviction matter.

Conclusion

Count Sixteen -- (Rule 3-110(A) [Failure to Perform Competently])[6]

The record clearly establishes, as charged in count sixteen, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to perform any legal services of value to Garcia in his wrongful termination action or in his eviction matter.

Case Number 11-O-17875 – The Client Trust Account Matters

Facts

On December 29, 2010, Respondent opened a client trust account (CTA) at Bank of America. Both Respondent and nonattorney Eduardo A. Flores were authorized signatories on the account.

On August 16, 2011, check number 188 in the amount of $1,000 and payable to Dr. Sameer M. Ibrahim was written on Respondent's CTA to pay a medical lien for Respondent's client Jose Medina.

On August 19, 2011, Bank of America paid (1) Respondent's CTA check number 191 in the amount of $5,000, which was made payable to the Law Office of Charlotte Spadaro, Inc. for office expenses, and (2) Respondent's CTA check number 190 in the amount of $11,874.15, which was made payable to Cash for the purpose of closing Respondent's CTA. After Bank of America paid those two checks on August 19, 2011, the balance in Respondent's CTA was zero,

[6] As noted above in footnote 2, count fifteen was dismissed at trial.

and Respondent's CTA was effectively closed. Thus, when Respondent's CTA check number 188 in the amount of $1,000 was presented to Bank of America for payment later that same day (i.e., August 19, 2011), Bank of America returned check number 188 to the payee, Dr. Ibrahim, unpaid. Thereafter, Bank of America assessed Respondent's CTA a $35.00 insufficient funds fee based on check number 188.

Of course, once check number 188 was written, Respondent was required to maintain $1,000 in her CTA on behalf of her client Medina until check number 188 was paid.

Between May 4, 2011 and August 19, 2011, checks were repeatedly drawn on Respondent's CTA to pay for Respondent's personal or business expenses, as follows:

Check Dated	**Check No.**	**Payee**	**Memo Line**	**Amount**
May 4, 2011	149	Law Office of Charlotte Spadaro, Inc.	Office Expenses	$ 6,000
May 4, 2011	150	Sergio Hernandez	Settlement Advanced (sic)	500
May 16, 2011	151	Law Office of Charlotte Spadaro, Inc.	Office Expenses	10,000
May 20, 2011	153	Law Office of Charlotte Spadaro, Inc.	Office Expenses	5,000
May 25, 2011	154	Law Office of Charlotte Spadaro, Inc.	Office Expenses and P. Doctor (illegible)	6,000
June 6, 2011	157	Justina Valladanes	Advance on Settlement	500
June 7, 2011	158	Law Office of Charlotte Spadaro, Inc.	Office expenses	5,000
June 9, 2011	160	Law Office of Charlotte Spadaro, Inc.	Office expenses	10,000
June 22, 2011	166	Law Office of Charlotte Spadaro, Inc.	Office expenses	10,000

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Check Dated	Check No.	Payee	Memo Line	Amount
June 30, 2011	170	Law Office of Charlotte Spadaro, Inc.	New office	$10,000
July 7, 2011	171	Law Office of Charlotte Spadaro, Inc.	Office expenses	5,000
July 13, 2011	173	Law Office of Charlotte Spadaro, Inc.	Paid doctor lien	10,000
July 22, 2011	174	Law Office of Charlotte Spadaro, Inc.	Office expenses	5,000
August 2, 2011	179	Law Office of Charlotte Spadaro, Inc.	Blank memo line	5,000
August 4, 2011	180	Law Office of Charlotte Spadaro, Inc.	Office expense	5,000
August 16, 2011	185	Law Office of Charlotte Spadaro, Inc.	Office expense	5,000
August 19, 2011	190	Cash	(Empties account)	11,874.15
August 19, 2011	191	Law Office of Charlotte Spadaro, Inc.	Office expense	5,000

Respondent maintained earned fees and personal funds in her CTA to issue checks to pay for her personal and business expenses. The multiple checks written to the Law Offices of Charlotte Spadaro, Inc. were issued to pay for office expenses.

At the time Respondent issued check numbers 150 and 157 to her clients, respectively, for advances on the settlements of their claims, no monies related to the clients' settlements were on deposit in Respondent's CTA. Accordingly, the record strongly suggests that Respondent used other clients' funds to make the advances to Hernandez and Valladanes. In any event, assuming that the advances complied with rule 4-210(A)(2)&(B), it was improper for Respondent to have paid the advances from her CTA.

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During the month of September 2011, there was no activity in Respondent's CTA. The balance of the account remained at a negative $35. On October 4, 2011, Bank of America charged off the $35 insufficient funds fee on Respondent's CTA, bringing the balance to zero as of that date.

On November 15, 2011, a State Bar investigator sent a letter to Respondent at her official State Bar membership records address requesting an explanation of the reportable action reported by the Bank of America on Respondent's CTA. The letter requested that Respondent respond in writing to the allegations and also to provide a copy of her bank records relating to her CTA for the period of May 2011 through November 2011.

On December 15, 2011, Respondent provided a written response to the State Bar investigator's letter. In her response, Respondent stated:

> I recently provided to you with a copy of check #188 which you requested. It was a check made out to a doctor and was honored by the bank. We recently changed accounts. It is possible that the recipient of a check may have held the check for awhile before cashing it, which case that check may have reached the bank after the account had been changed. There is another account that the bank could have used to honor such a check. There has never been an issue of anyone not having received funds due to them from the account in question.

At the time Respondent sent the State Bar investigator her response dated December 15, 2011, Respondent knew, or was grossly negligent in not knowing, that Bank of America had returned check number 188 to Dr. Ibrahim unpaid because she closed her CTA only three days after check number 188 was written. Contrary to Respondent's statements in her December 15, 2011 letter, check number 188 was never honored by the bank. Instead, Respondent paid Dr. Ibrahim $1,050 using a check drawn on her operating account in the name "Law Office of Charlotte Spadaro Inc., which account is not a trust account.

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Conclusions

Count One -- (§ 6106 [Moral Turpitude])

In count one, the State Bar charges Respondent with willfully violating section 6106, which proscribes the commission of any act involving dishonesty, moral turpitude, or corruption. Specifically, the State Bar charges that Respondent willfully misappropriate the $1,000 that should have been maintained in her CTA until after check number 188 had been paid by the bank.

As the review department aptly noted in *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411:

> [A]n attorney has a "personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds." [Citation.] These duties are nondelegable. [Citation.] This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. *That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee.* [Citation.]

(Italics added.)

A conversion of client funds is established whenever the actual balance of the bank account in which the client's funds were deposited drops below the amount credited to that client. (*Edwards v. State* Bar (1990) 52 Cal.3d 28, 37; Palomo *v. State Bar* (1984) 36 Cal.3d 785, 795; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 123.) Once such a conversion is established, the burden then shifts to the attorney to show that he or she did not act in bad faith or engage in acts of dishonesty and that the conversion occurred as a result of only ordinary negligence and not gross carelessness and negligence. Otherwise, the attorney will be found culpable of misappropriating the client's funds, which merits severe discipline. Respondent

failed to establish that she did not act in bad faith or engage in acts of dishonesty. Nor did she establish that her conversion of $1,000 out of her CTA occurred as a result of only ordinary negligence, and not gross carelessness. Moreover, the record affirmatively establishes that Respondent was grossly negligent in not maintaining $1,000 in her CTA until after check number 188 was paid. Accordingly, the court finds that the record clearly establishes that Respondent willfully misappropriated $1,000 of client funds as charged in count one. And the fact that Respondent ultimately paid Dr. Ibrahim $1,050 out of her operating account does not vitiate the misappropriation.

Counts Two & Three -- (Rule 4-100(A) [Hold Client Funds in Trust Account])

In counts two and three, the State Bar charges that Respondent willfully violated rule 4-100(A), which provides that all funds received or held for the benefit of clients must be deposited in a CTA and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith, except for limited exceptions not relevant here. Specifically, the State Bar charges, in count two, that Respondent violated rule 4-100(A) by failing to maintain $1,000 in her CTA until check number 188 was paid. And, in count three, the State Bar charges that Respondent violated rule 4-100(A) by depositing and maintaining personal funds in her CTA and by paying personal and business debts out of her CTA. The record clearly establishes the violations of rule 4-100(A) that are charged in both counts two and three.

Count Four -- (§ 6106 [Moral Turpitude])

The record clearly establishes the section 6106 violations charged in count four. Respondent's written representations in her December 15, 2011, letter to the State Bar were knowingly false and misleading. First, check number 188 was never honored by the bank. Second, Dr. Ibrahim did not hold the check for awhile before attempting to cash it. Third, there was no other CTA on record at the bank for Respondent when check number 188 was presented

for payment. And, fourth, Dr. Ibrahim did not receive funds from the CTA at issue, but from Respondent's operating account, which by definition should not have had any clients funds in it.

Aggravation[7]

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.2(b).)

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has one prior record of discipline, which is an aggravating circumstance. (Std. 1.2(b)(i).) On November 1, 2012, the State Bar Court Review Department filed an opinion in *In the Matter of Charlotte Spadaro, a Member of the State Bar*, case number 08-O-14222 (*Spadaro* I). In that opinion, the review department recommends to the California Supreme Court that Respondent be placed on one year's stayed suspension and three years' probation on conditions, including that she be actually suspended from the practice of law for six months and until she pays $26,500 in restitution plus interest.

The review department found Respondent culpable of the following five counts of misconduct: one count of violating rule 4-100(B)(3) (failure to account for client funds); one count of violating rule 3-700(D)(2) (failure to refund unearned fees); and three counts of violating rule 3-300 (improperly entering into a business transaction with a client).

In mitigation, Respondent had, at the time, no prior record of discipline in more than 37 years of practice, and Respondent had extensive community involvement. In aggravation, Respondent's misconduct evidenced multiple acts of misconduct; significantly harmed the client; and was surrounded by overreaching in that she exploited her position of trust with her client. In

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[7] All references to standards (Stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

further aggravation Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

In the present disciplinary proceeding, Respondent has been found culpable of 16 counts of misconduct (12 counts of misconduct in 8 client matters plus 3 counts of CTA violations plus 1 count of making misrepresentations to the State Bar during a disciplinary investigation).

Uncharged-But-Proved-Misconduct Aggravation

The court finds that there is clear and convincing evidence that, in the dog-boarding-kennel matter, Respondent entered into a business transaction with her client Angelo Rivers in willful violation of rule 3-300. Without question, when Rivers retained Respondent to prepare a loan-modification package to submit to the lender on the kennel property, Rivers became one of Respondent's clients. Respondent then entered into a business relationship with Rivers by leasing part of the kennel property; agreeing to pay the monthly mortgage payment on the kennel property; and agreeing to operate the kennel business.

However, before entering into that transaction with Rivers, Respondent failed to provide written notice to a client that the client may seek the advice of an independent attorney of the client's choice and given a reasonable opportunity to seek that advice in willful violation of rule 3-300.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

Respondent has displayed indifference toward rectification of or atonement for the consequences of her conduct in the present proceeding. Respondent does not recognize the harm she has caused her clients by failing to perform with competence. Respondent's indifference to the harm she caused her clients is especially noted by her conduct at trial in this matter.

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Numerous times Respondent accused the witnesses in this disciplinary proceeding as being liars or perjurers without any relevant or plausible impeachment evidence to support her accusations.

Many of the former clients that testified against Respondent at trial in this matter speak English as a second language. Spanish is their primary language. Many Spanish speaking witnesses availed themselves of the service of the court's interpreters during their testimony. In her arguments to the court, Respondent questioned the credibility of her former clients because they testified by way of an interpreter. Respondent's conduct displays indifference toward her former clients.

On April 26, 2012, Respondent filed a complaint for declaratory relief in the San Bernardino Superior Court, entitled *Spadaro v. Phyllis Williams, Business Matters, The State Bar of California*, case number CIVRS1203310. Phyllis Williams is a former client of Respondent who was the complaining witness who testified against Respondent in *Spadaro* I. In her declaratory-relief complaint, Respondent effectively seeks to collaterally attack the State Bar Court's findings of facts and culpability determinations in *Spadaro* I. Without question, Respondent's attempt to collaterally attack the findings and determinations in *Spadaro* I as opposed to appealing those findings and determinations is inappropriate and further establishes her indifference towards rectification and atonement for the misconduct found in *Spadaro* I. And that indifference is appropriately considered an additional factor in aggravation in the present disciplinary proceeding (i.e., *Spadaro* II).

Mitigation

The record shows that Respondent has proved by clear and convincing evidence the following factor in mitigation. (Std. 1.2(e).)

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Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

As noted above, Respondent was injured when her car was struck by a drunk driver on November 22, 2009. Respondent was hospitalized from December 12, 2009, through December 23, 2009. Thereafter, Respondent was in the Redlands Center until February 23, 2110.

While in the Redlands Center, Respondent continued to practice law as evidenced by her meeting with clients in the class action and in the Melendez action in January and February 2010. To what extend Respondent continued to suffer from her injuries after being released from Redlands Health Care Center is not in the record.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks to the purposes of disciplinary proceedings and sanctions. Standard 1.3 provides that the primary purposes of disciplinary proceedings "are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Respondent has been found culpable of intentionally, recklessly, or repeatedly failing to perform legal services in willful violation of rule 3-110(A) in seven separate client matters (i.e., counts one, four, six, seven, ten, fourteen, and sixteen in case number 09-O-15762-RAP). In many of those seven client matters, Respondent did little more than collect her fees and file a

complaint for the client or clients. She often failed to adequately communicate with the clients and almost always failed to perform any meaningful legal services for the clients and effectively abandoned the clients. Thus, the most severe of the different relevant sanctions is found in standard 2.4(a), which provides that the "Culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment."

Also relevant in this proceeding is standard 1.7(a), which provides that, when an attorney has one prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that Respondent be disbarred while Respondent asserts that the dismissal of all the charges against her is the appropriate disposition. After considering the facts and the law, the court agrees with the State Bar that only Respondent's disbarment will adequately fulfill the goals of attorney discipline. In addition to being found culpable on seven counts of intentionally, recklessly, or repeatedly failing to perform legal services with

competence in seven separate client matters, Respondent has also been found culpable on one count of seeking to mislead a superior court judge (count five in case number 09-O-15762-RAP); one count of misappropriating $1,000 of client funds (count one in case number 11-O-17875-RAP); and one count of making misrepresentations to the State Bar during a disciplinary investigation (count four in case number 11-O-17875-RAP). Of course, seeking to mislead a judge, misappropriating client funds, and making misrepresentations to the State Bar are acts that involve moral turpitude, if not dishonesty.

Moreover, Respondent's assertion that the dismissal of all charges is the appropriate disposition in this proceeding is particularly troubling because it indicates that Respondent fails to appreciate the wrongfulness of the misconduct found in this proceeding. The failure to appreciate the wrongfulness of one's misconduct strongly suggests that the misconduct will reoccur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.) This alone confirms that appropriateness of the court's recommendation that Respondent be disbarred in accordance with standard 2.4(a).

In addition to recommending Respondent's disbarment, the court will recommend that Respondent be ordered to make restitution for the attorney's fees she collected in five client matters in which she failed to perform any legal services of value to the client or clients (counts six, seven, ten, fourteen, and sixteen in case number 09-O-15762-RAP). (See *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 324 ["To justify retention of legal fees, respondent was required to perform more than minimal preliminary services of no value to the client. (Citation.)"].)

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Recommendations

Discipline

It is recommended that Respondent **CHARLOTTE SPADARO**, State Bar number 47163, be disbarred from the practice of law in California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state. It is also recommended that **CHARLOTTE SPADARO** be ordered to make restitution to the following payees:

(1) Charles and Patricia Suppe in the amount of $2,500 plus 10 percent interest per year from April 16, 2010;

(2) Cynthia Melendez in the amount of $6,291.08 plus 10 percent interest per year from June 18, 2011;

(3) Francisco and Marian Vizcaino in the amount of $1,472 plus 10 percent interest per year from June 18, 2011;

(4) Gilberto Ramirez in the amount of $1,472 plus 10 percent interest per year from June 18, 2011;

(5) Laura Escobar in the amount of $1,172 plus 10 percent interest per year from June 18, 2011;

(6) Francisco and Celiazar Mata in the amount of $1,472 plus 10 percent interest per year from June 18, 2011;

(7) Felipe and Raquel Perez in the amount of $1,172 plus 10 percent interest per year from June 18, 2011;

(8) Antonio Alaniz in the amount of $1,502 plus 10 percent interest per year from June 18, 2011;

(9) Elvia Armendariz in the amount of $1,472 plus 10 percent interest per year from June 18, 2011;

(10) Carmen Galindo in the amount of $3,250 plus 10 percent interest per year from May 28, 2010; and

(11) Jay Garcia in the amount of $1,200 plus 10 percent interest per year from October 10, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **CHARLOTTE SPADARO** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D).) Respondent's inactive enrollment will terminate on the effective date of the Supreme Court order in this proceeding or as provided for in Rules of Procedure of the State Bar, rule 5.111(D)(2) or as otherwise ordered by the Supreme Court under its plenary jurisdiction.

Dated: November 16, 2012.

RICHARD A. PLATEL
Judge of the State Bar Court